

Sonos, Inc.’s Motion *In Limine* No. 1

EXHIBIT A

(Filed Under Seal)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
-----x
SONOS, INC.,

Plaintiff,
vs. Case No. 3:21-CV-07559-WHA
GOOGLE LLC,
Defendant.

-----x
-AND-

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
-----x
GOOGLE LLC,
Plaintiff,
vs. Case No. 3:20-CV-06754-WHA
SONOS, INC.,
Defendant.

-----x
HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
CHRISTOPHER BAKEWELL
Tuesday, January 31, 2023

Reported By: Lynne Ledanois, CSR 6811
Job No. 5683612

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SONOS, INC.,

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SONOS, INC.,
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Videotaped deposition of CHRISTOPHER
BAKEWELL, taken in Houston, Texas commencing at
9:37 a.m. Central on Tuesday, January 31, 2023,
before Lynne Ledanois, Certified Shorthand Reporter
No. 6811.

REMOTE APPEARANCES

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ALSO PRESENT:

John MacDonell, Videographer

1 Q 1.26 trillion U.S. dollars. Thank you. 9:48AM
2 Let's go to -- let me find page for you,
3 one second.
4 A My report?
5 Q Let's go to your report. It's Page 6 of 9:49AM
6 your report, just Page 12 of the PDF.
7 You've got a heading there that says "1.3,
8 Summary of Opinions."
9 A Page 6, yes.
10 Q Now, your task is to assume that there's 9:49AM
11 liability, right, for infringement of the '033
12 patent, the '966 patent and the '885 patent; right?
13 A That's true.
14 Q So those are valid and infringed patents
15 as far as you're concerned; correct? 9:49AM
16 A Correct.
17 Q What is your opinion as to what the
18 damages should be for the '033 patent?
19 A What a reasonable royalty should be?
20 Q Yes, if that's what your damages opinion 9:49AM
21 is, correct.
22 A Less than \$2.6 million.
23 Q What does "less than \$2.6 million" mean?
24 A It means what I described in my report,
25 there's what I understand to be commercially 9:50AM

1 acceptable non-infringing alternatives that are 9:50AM
2 broader in scope than just the '033 patent to
3 implement a non-infringing alternative for the '033
4 patent at the time of the hypothetical negotiation
5 would have been less. 9:50AM

6 And so the \$2.6 million is a -- I think a
7 fair measure.

8 I wrote about this in Paragraph 35 and
9 then elsewhere.

10 Q Okay. I guess I'm just taking issue with 9:50AM
11 your qualification that it be less than
12 \$2.6 million.

13 How much less than \$2.6 million should it
14 be?

15 A Right now I don't have a specific amount as 9:51AM
16 to how much less. It's something less than
17 \$2.6 million based upon the information that I
18 reviewed to date.

19 Q Could it be zero?

20 A No, I don't think so. 9:51AM

21 Q You have to give a reasonable royalty;
22 right?

23 A Well, I think that's true, but I also think
24 that it's -- I think that's true -- as I understand
25 it, that's a requirement of like a reasonable royalty 9:51AM

1 has to be a significant -- it has to be an amount. 9:51AM

2 It can be insignificant or de minimus, I
3 guess, which is an amount but -- so that's what I
4 understand the rules to be.

5 But I also understand the fact here that 9:52AM
6 there's costs that would be associated with
7 implementing a non-infringing alternative.

8 Q Do you believe the cost of implementing a
9 non-infringing alternative could reduce the damages
10 award to zero or something close to zero? 9:52AM

11 A In this case?

12 Q Yes.

13 A No, I don't think so. That's -- I haven't
14 seen that evidence for the '033 patent. My mind would
15 be open to it if somebody from Google explained that 9:52AM
16 that was so and there was technical opinion to support
17 that as well.

18 But I haven't seen that for the '033
19 patent.

20 Q Let's take a look at Paragraph 19 of your 9:52AM
21 report.

22 A Okay.

23 Q The last sentence there makes a reference
24 to a 1:1 -- that's one, colon, one -- economic
25 relationship between the '033 patent and YouTube 9:53AM

1 Q Sorry, I meant paragraph, sorry, 11:29AM
2 paragraph.

3 A You probably said it, I just misheard you.
4 I got it.

5 Q I think we started down this path and I'm 11:29AM
6 sorry I didn't finish it earlier.

7 I asked you about what your opinion was as
8 to the damages for the '033 patent and I think you
9 said less than 2.6 million; is that right?

10 A Yes. 11:30AM

11 Q How about the same question for the '885
12 patent, what is your opinion as to what the damages
13 should be for infringing the '885 patent?

14 A Less than \$200,000.

15 Q Okay. And how about for the '966 patent, 11:30AM
16 what is your damages opinion for how much Google
17 should be awarded for infringing the '966 patent?

18 A Less than \$200,000.

19 Q Now, for -- so we're in this world again
20 where you've assumed that there is liability for 11:31AM
21 infringement of the '885 and '966 patents; correct?

22 A Yes.

23 Q So now, do you add these two figures of
24 \$200,000 together or is it your position that Sonos
25 is only entitled to one of them? 11:31AM

1 like taking an issue off the table for understanding 11:32AM
2 these numbers, the way I described it is you can add
3 all three together, but that would overstate the
4 amount of a royalty.

5 And it's an issue for Mr. Malackowski in 11:33AM
6 that his royalty is already overstated and this
7 overstates the royalty even further because he has
8 not dealt with the double counting.

9 He's also trying to accumulate value
10 associated with units and he's double counting that 11:33AM
11 value.

12 There is an issue in that he takes the app
13 IFTTT which is sold once and his royalty counts it
14 twice in certain instances.

15 That's like a -- it's an analytical issue. 11:33AM
16 BY MR. SULLIVAN:

17 Q I'm sorry, are you through with your
18 answer?

19 A I'm through. You don't have to apologize.

20 Q I just don't want to interrupt you, that's 11:34AM
21 all.

22 A I'm finished.

23 Q Okay. Now, you've based these numbers
24 that we've been talking about for your damages
25 awards on the cost of implementing commercially 11:34AM

1 acceptable non-infringing alternatives; is that 11:34AM
2 correct?

3 A That's right.

4 Q What if there are no commercially
5 acceptable non-infringing alternatives, what would 11:34AM
6 your damages award be?

7 A I think --

8 MS. MA: Objection to form.

9 THE WITNESS: The next best measure is
10 comparable patent acquisitions. 11:34AM

11 BY MR. SULLIVAN:

12 Q Do you set forth those numbers in your
13 expert report?

14 A Yes.

15 Q What would those numbers be? We'll start 11:35AM
16 within infringement of the '033 patent.

17 A I have it in a few places. \$250,000. It's
18 in Footnote 50, for example.

19 Q Okay. And how about for the '885 patent,
20 what would be your damages award if there were no 11:35AM
21 commercially acceptable non-infringing alternatives?

22 MS. MA: Objection to form.

23 THE WITNESS: No more than 2.25 million
24 would be the next in line. And then if

25 Mr. Malackowski is -- if the trier of fact considers 11:36AM

1 what he has, I've also provided adjustments to that 11:36AM
2 and shown how his calculations are incorrect. That
3 would be additional data to consider.

4 But I think the next best measure would be
5 these comparable patent acquisitions. 11:36AM

6 BY MR. SULLIVAN:

7 Q How about for the '966 patent, what would
8 be the damages award if there is no commercially
9 acceptable non-infringing alternatives?

10 A I think the next best measure is \$250,000 11:36AM
11 and then it depends if the trier of fact considers
12 Mr. Malackowski's numbers, I think his theories can be
13 adjusted or reconciled to a number close to this to
14 the extent that they are considered.

15 Although I think there's real issues with 11:37AM
16 his theories.

17 Q In your showdown report, you said the
18 damages for the '885 patent should be no more than
19 \$5,000; right?

20 A I think so. 11:37AM

21 Q What changed?

22 A Well, it's a different proceeding. I think
23 I have more information. I think that I, in this
24 report include, even though Mr. MacKay said that it
25 wouldn't belong, for purposes of being more inclusive 11:37AM

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

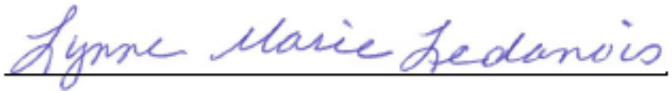
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [] was [x] wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19 Dated: February 1, 2023
20
21

22 
23

24 LYNNE MARIE LEDANOIS

25 CSR No. 6811